

FCC MAIL SECTION

Aug 17 9 37 AM '98 Federal Communications Commission

FCC 98-198

DISPATCHED BY Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )

Telephone Number Portability )

CC Docket No. 95-116

RM 8535

**THIRD MEMORANDUM OPINION AND ORDER  
ON RECONSIDERATION**

Adopted: August 12, 1998

Released: August 13, 1998

By the Commission:

**I. INTRODUCTION**

1. On June 27, 1996, the Commission adopted the *First Report and Order and Further Notice of Proposed Rulemaking (First Report and Order)*<sup>1</sup> in this docket which implemented the provisions of section 251 of the Communications Act of 1934, as amended,<sup>2</sup> that relate to telephone number portability.<sup>3</sup> Section 251(b)(2) requires all local exchange carriers (LECs) to offer, "to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission."<sup>4</sup> In the *First Report and Order*, the Commission, among other things, adopted a phased implementation schedule for the

<sup>1</sup> *Telephone Number Portability*, CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352 (1996), *recon.*, 12 FCC Rcd 7236 (1997), *further recon. pending, appeals pending sub nom. Bell Atlantic NYNEX Mobile, Inc. v. FCC et al.*, No. 97-9551 (10th Cir. filed May 30, 1997), *U S WEST, Inc. v. FCC et al.*, No. 97-9518 (10th Cir. filed Apr. 24, 1997).

<sup>2</sup> 47 U.S.C. § 251. Section 251 was added by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act).

<sup>3</sup> Number portability is defined by the 1996 Act as "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another." 47 U.S.C. § 153(30).

<sup>4</sup> 47 U.S.C. § 251(b)(2).

deployment of long-term number portability by wireline carriers. In response to numerous petitions for reconsideration or clarification, the Commission modified the number portability implementation schedule in a *First Memorandum Opinion and Order on Reconsideration* (*First Order on Reconsideration*) adopted on March 6, 1997.<sup>5</sup> On May 8, 1997, KMC Telecom, Inc. (KMC) filed a petition for reconsideration of the *First Order on Reconsideration* seeking further modification of the implementation timetable. For the reasons discussed below, we deny KMC's petition and affirm the modified number portability deployment schedule for wireline carriers adopted in the *First Order on Reconsideration*.

## II. BACKGROUND

2. In the *First Report and Order*, the Commission required LECs operating in the 100 largest Metropolitan Statistical Areas (MSAs)<sup>6</sup> to offer long-term number portability pursuant to a phased deployment schedule beginning October 1, 1997 and concluding December 31, 1998.<sup>7</sup> The Commission also allowed competing carriers to submit requests for deployment in areas outside the 100 largest MSAs beginning January 1, 1999 and required LECs to make long-term number portability available within six months of the receipt of such a request.

3. In the *First Order on Reconsideration*, the Commission found that the initial implementation of number portability technology would require more time than would subsequent deployment occurring after the technology had been thoroughly tested and used in a live environment.<sup>8</sup> Therefore, the Commission extended the deadline for completion of

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<sup>5</sup> See *First Order on Reconsideration*, 12 FCC Rcd 7236 (1997).

<sup>6</sup> MSAs are geographic areas designated by the Bureau of Census for purposes of collecting and analyzing data. The boundaries of MSAs are defined using statistics that are widely recognized as indications of metropolitan character. See *Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Memorandum Opinion and Order, FCC 97-168 (rel. May 30, 1997) at ¶ 17 n.26.

<sup>7</sup> The Commission required deployment in one specified MSA in each of the then-existing seven BOC regions by the end of the fourth quarter of 1997 ("Phase I"), 16 additional specified MSAs by the end of the first quarter of 1998 ("Phase II"), 22 additional specified MSAs by the end of the second quarter of 1998 ("Phase III"), 25 additional specified MSAs by the end of the third quarter of 1998 ("Phase IV"), and 30 additional specified MSAs by the end of the fourth quarter of 1998 ("Phase V"). *First Report and Order*, 11 FCC Rcd at 8393, app. F.

<sup>8</sup> *Id.* at 7283. The completion date of a trial of portability deployment in Chicago, originally scheduled for August 31, 1997, had been delayed until September 26, 1997, at the time of the *First Order on Reconsideration*. *Id.* The Commission noted that the delay in the trial warranted the three month postponement of the deadline for Phase I completion so that small and mid-size LECs could await the results of tests

portability deployment by three months for Phase I and also extended the deadline by 45 days for Phase II so that completion of both Phases I and II would not be required on the same day.<sup>9</sup> The Commission found that such a modification would "allow carriers to take appropriate steps to safeguard network reliability."<sup>10</sup> In order to allow LECs to focus their resources on areas within the designated MSAs in which competitors were actually seeking entry,<sup>11</sup> the Commission revised the LECs' deployment obligations and required them to provide number portability only in those switches within the largest 100 MSAs for which a competing carrier specifically requested its provision.<sup>12</sup> The Commission concluded that such a procedure would foster efficient deployment of portability, ensure that LECs could maintain network integrity by giving them time to plan and test portability before widespread deployment, and reduce costs.<sup>13</sup>

4. In the *First Order on Reconsideration*, the Commission modified its rule that carriers outside of the largest 100 MSAs could file requests for number portability only after deployment has been completed in the 100 largest MSAs. Under the revised rule, carriers may submit portability deployment requests to the LECs at any time.<sup>14</sup> In modifying the implementation obligation of carriers, the Commission refused to adopt the proposal of several petitioners that would have accelerated the time frame within which LECs would be required to fulfill portability requests in markets outside the 100 largest MSAs.<sup>15</sup> Rather, the Commission held that requests for deployment in smaller MSAs occurring on or prior to

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conducted by larger LECs in order to resolve potential problems of new technology. *Id.*

<sup>9</sup> *Id.* at 7283-84. Pursuant to the revised implementation schedule, deployment in Phase I will take place from October 1, 1997 through March 31, 1998, and deployment in Phase II will take place from January 1, 1998 through May 15, 1998.

<sup>10</sup> *Id.* at 7283.

<sup>11</sup> *First Order on Reconsideration*, 12 FCC Rcd at 7272.

<sup>12</sup> *Id.* at 7272-73. Thus, pursuant to the *First Order on Reconsideration*, LECs are required to fulfill number portability requests only in requested switches by the deadlines established by the Commission for each deployment phase. For example, Phase I requires LECs serving Chicago, Philadelphia, Atlanta, New York, Los Angeles, Houston, and Minneapolis to provide portability in specific switches by March 31, 1998, in response to competitor requests.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 7298.

<sup>15</sup> *Id.*

January 1, 1999 either must be fulfilled within six months of January 1, 1999, or resolved in private agreements for early deployment.<sup>16</sup> In limiting initial deployment to larger MSAs, the Commission weighed the availability of switch software, the burden on carriers serving multiple regions, and the potential need for significant upgrades in smaller markets.<sup>17</sup> The Commission concluded that accelerating deployment schedules in smaller markets might divert limited resources from larger MSAs and thus delay the overall deployment of number portability.<sup>18</sup>

5. The revised implementation schedule leaves to industry and to state commissions the determination of the most efficient means of identifying those switches within the top 100 MSAs in which carriers have expressed interest.<sup>19</sup> The Commission established minimum criteria applicable to "any procedure to identify and request switches for deployment of number portability to ensure that carriers that receive requests for deployment in their switches have adequate time to fulfill the requests."<sup>20</sup> In order to ensure that LECs are not overburdened with demands for number portability, and to provide carrier certainty, the Commission concluded that state commissions may not accelerate the deployment schedule.<sup>21</sup>

### III. PETITION

6. KMC seeks reconsideration of the revised number portability deployment schedule the Commission adopted in the *First Order on Reconsideration* with respect to markets outside the 100 largest MSAs. KMC contends that switch vendors may have the capacity to support number portability deployment in smaller markets now that LECs are required to implement number portability only in those switches within the 100 largest MSAs

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<sup>16</sup> *Id.* The *First Order on Reconsideration* did not change the requirement that requests for deployment filed after January 1, 1999, must be completed within six months of the request.

<sup>17</sup> *Id.* at 7296-97.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 7273.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 7297-98. Because the *First Report and Order* was silent on the issue of whether states could accelerate the deployment schedule, the Commission grandfathered any state decisions to accelerate deployment for a particular market that were adopted prior to the release of the *First Order on Reconsideration*. *Id.* at 7298.

where a competitor requests its provision.<sup>22</sup> KMC further asserted that by November 1, 1997, one month after the deadline for competitive LECs to request portability in MSAs in the first three phases of the implementation schedule,<sup>23</sup> vendors should know if they are capable of converting more switches than the implementation schedule requires LECs to convert.<sup>24</sup> Such excess vendor capacity, KMC maintains, should be used to implement portability outside the largest 100 MSAs.<sup>25</sup> Specifically, KMC proposes that, beginning November 1, 1997, LECs be required to provide number portability in any MSA outside the largest 100 within six months of the receipt of a competitor's request, unless the LEC obtains a statement from a switch vendor that it does not have capacity to fulfill the request.<sup>26</sup> Pursuant to KMC's proposal, a LEC would need to submit such a vendor statement to the Commission in order to obtain a waiver of the implementation obligation.

#### IV. DISCUSSION

7. As an initial matter, we reject the procedural objections of commenters<sup>27</sup> that KMC's petition simply repeats arguments advanced in its prior petition for reconsideration.<sup>28</sup> Although the instant petition, like KMC's prior petition, asks the Commission to accelerate the implementation of number portability outside the top 100 MSAs, the instant petition is based on the Commission's modification of the implementation obligations in the *First Order on Reconsideration*. In this respect, the *First Order on Reconsideration* "modifie[d] rules adopted by the original order," and is, "to the extent of such modification, subject to reconsideration in the same manner as the original order."<sup>29</sup> We therefore find that KMC's

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<sup>22</sup> KMC Petition at 2.

<sup>23</sup> Pursuant to the *First Order on Reconsideration*, carriers must request number portability deployment in specific switches within an MSA nine months before the deadline for deployment in that MSA. *First Order on Reconsideration*, 12 FCC Rcd at 7274.

<sup>24</sup> KMC Petition at 6.

<sup>25</sup> *Id.* at 3.

<sup>26</sup> *Id.* at 2.

<sup>27</sup> The Appendix contains a list of commenting parties.

<sup>28</sup> U S WEST Opposition at 2-3; Bell Atlantic/NYNEX Opposition at 2-3; USTA Opposition at 3-5.

<sup>29</sup> 47 C.F.R. § 1.429(i) provides that

[a]ny order disposing of a petition for reconsideration which modifies rules adopted by the

petition, which asserts that the Commission's modification of LEC implementation obligations created the potential for excess vendor capacity, should not be dismissed as repetitious.

8. Although we do not dismiss KMC's petition on procedural grounds, we deny it on substantive grounds. The focus of KMC's petition is the excess vendor capacity that it anticipates will result from the revised implementation schedule. Although KMC correctly states that the Commission in the *First Report and Order* took into account the ability of switch vendors to fulfill portability implementation requests,<sup>30</sup> KMC erroneously claims that vendor capacity was "the Commission's primary consideration in establishing the deployment schedule."<sup>31</sup> Available switch capacity was only one of the bases for the Commission's decision to implement number portability more slowly outside the 100 largest MSAs. For example, in the *First Order on Reconsideration*, the Commission found that confining initial deployment to the 100 largest MSAs recognized "the burden on carriers serving multiple regions and the fact that more significant upgrades may be necessary for carriers operating in smaller areas."<sup>32</sup> The Commission also recognized that beginning implementation in larger markets serves to "ensure that number portability will be made available in those regions where competing service providers are likely to offer alternative services."<sup>33</sup> We are not persuaded on the basis of this record that the potential existence of excess vendor capacity outweighs these considerations that led the Commission to focus initially on bringing local number portability to larger markets.<sup>34</sup>

9. We further find, as the Commission did in the *First Order on Reconsideration*, that KMC has not shown that "the necessary software, hardware, and other resources will be available earlier in areas originally scheduled for later deployment, or will be available in quantities sufficient to support deployment in additional areas, particularly in areas outside the

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original order is, to the extent of such modification, subject to reconsideration in the same manner as the original order. Except in such circumstance, a second petition for reconsideration may be dismissed by the staff as repetitious.

<sup>30</sup> *First Report and Order*, 11 FCC Red at 8393.

<sup>31</sup> KMC Reply at 4.

<sup>32</sup> *First Order on Reconsideration*, 12 FCC Red at 7297.

<sup>33</sup> *Id.*

<sup>34</sup> See U S WEST Opposition at 9; Bell Atlantic/NYNEX Opposition at 4; Ameritech Opposition at 3; USTA Opposition at 6.

largest 100 MSAs."<sup>35</sup> The deployment of number portability in the top 100 MSAs is a major undertaking that will require LECs to commit a large amount of resources in order to ensure its successful completion.<sup>36</sup> For example, U S WEST notes that it may be necessary to upgrade tandem and operator services switches and E911 systems in the specified geographic area, modify operations support systems and service control points, and add signaling links and additional trunks.<sup>37</sup> To the extent that LECs are required to allocate resources to smaller markets while at the same time fulfilling their obligation to deploy number portability in the larger markets, efficient deployment of number portability may be jeopardized because resources would need to be deployed in multiple potentially distant geographic areas simultaneously.<sup>38</sup> We also note, in response to MCI's contention that LECs should be required to offer portability in MSAs adjacent to those within the 100 largest MSAs, that the resource demands on the LEC may be just as high in such MSAs.<sup>39</sup> As U S WEST asserts, "consideration of whether one or two more offices in smaller MSAs can be added to a Phase because one or two offices were not requested by LECs in the top 100 MSAs is a more complex network planning and deployment question than whether the local switch vendor has one or two open slots for loading software in end-offices' switches."<sup>40</sup> Given these concerns, the Commission previously found that phased implementation, beginning with requested switches in the largest 100 MSAs, is the most effective way of balancing the need for efficient number portability deployment with the availability of LEC resources.<sup>41</sup> KMC offers no response to these arguments; indeed, KMC acknowledges that "in some cases the need to perform network upgrades or modifications may preclude a LEC from meeting [a] deadline, despite the availability of the necessary vendor software."<sup>42</sup>

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<sup>35</sup> *First Order on Reconsideration*, 12 FCC Rcd at 7297.

<sup>36</sup> *See* U S WEST Opposition at 10; Bell Atlantic/NYNEX Opposition at 5; Ameritech Opposition at 3; USTA Opposition at 8.

<sup>37</sup> *Id.*

<sup>38</sup> U S WEST Opposition at 8, n.21.

<sup>39</sup> Letter from Donna M. Roberts, Senior Counsel - Federal Law and Public Policy, MCI Telecommunications Corp., to Richard Metzger, Chief, Common Carrier Bureau, Federal Communications Commission at 2 (Dec. 10, 1997).

<sup>40</sup> U S WEST Opposition at 8.

<sup>41</sup> *First Report and Order*, 11 FCC Rcd at 8394-95.

<sup>42</sup> KMC Reply at 6.

10. We note that in modifying the implementation schedule to allow more time for the initial rollout of number portability, the Commission emphasized that it considers "network reliability to be of paramount importance."<sup>43</sup> We continue to believe that network reliability is of the utmost importance and find that the current implementation schedule, by allowing LECs to focus on the larger MSAs for the initial phases of implementation, provides LECs certainty as to the Commission's requirements and ensures that resources will not be spread so thinly as to jeopardize number portability deployment and network reliability. It would be inconsistent with these important considerations for the Commission to accelerate the schedule for smaller markets so early in the implementation process.

11. We also find that KMC's proposal, by placing burdensome filing requirements on LECs and switch vendors, is an inefficient way to determine where network capabilities should be deployed.<sup>44</sup> Requiring LECs first to obtain a statement from switch vendors that they do not have capacity to handle portability requests in smaller MSAs, and then to use that statement to obtain a waiver from the Commission, would create an administrative problem for LECs as they respond to number portability requests in compliance with the deployment schedule, and could be administratively burdensome for the Commission as well.<sup>45</sup> In addition, such a waiver procedure could disrupt the continued orderly and efficient deployment of number portability in areas already scheduled for deployment by diverting resources to smaller MSAs before deployment in requested switches within the 100 largest MSAs is complete.<sup>46</sup> The Commission rejected a similar waiver-type proposal in the *First Order on Reconsideration* after concluding that "a waiver procedure would create a period of uncertainty for both the incumbent LEC and the competitive LEC as to whether portability would actually be deployed in that switch."<sup>47</sup> We therefore decline to adopt a proposal that could place administrative hurdles in the way of efficient number portability implementation.<sup>48</sup>

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<sup>43</sup> *First Order on Reconsideration*, 12 FCC Rcd at 7285.

<sup>44</sup> See Bell Atlantic/NYNEX Opposition at 5.

<sup>45</sup> KMC Petition at 2, 8. In the *First Report and Order*, the Commission authorized the Chief of the Common Carrier Bureau "to waive or stay any of the dates in the implementation schedule, as the Chief determines is necessary to ensure the efficient development of number portability, for a period not to exceed 9 months (*i.e.*, no later than September 30, 1999)." *First Report and Order*, 11 FCC Rcd at 8397. In addition, KMC maintains that a LEC could utilize the Commission's waiver procedure even without a statement of vendor capacity.

<sup>46</sup> Bell Atlantic/NYNEX Opposition at 7; USTA Opposition at 6; U S WEST Opposition at 11.

<sup>47</sup> *First Order on Reconsideration*, 12 FCC Rcd at 7277.

<sup>48</sup> *Id.*

12. Moreover, KMC has failed to produce any evidence to support its contention that excess vendor capacity will in fact be available. KMC offers only its conclusory assertion that by November 1, 1997,<sup>49</sup> "it should be apparent whether the initial requests for number portability within the top 100 MSAs are running at a level that leaves the vendors with unused capacity."<sup>50</sup> In response to KMC's assertion, U S WEST submitted evidence that competitors in its service area will request portability deployment in most of U S WEST's switches in the first three phases of deployment.<sup>51</sup> KMC offers nothing to counter this evidence that U S WEST will be occupied in converting most of its switches under the present implementation schedule. KMC's argument also ignores the fact that the deadline for requesting number portability in 55 of the 100 largest MSAs is not until *after* November 1, 1997,<sup>52</sup> and LECs will not yet know to what extent their resources and the resources of vendors will be needed to meet forthcoming number portability implementation requests.<sup>53</sup> Moreover, the Commission has not been presented with any evidence in this proceeding subsequent to November 1, 1997 that suggests that excess vendor capacity is in fact now available. We decline to modify our rules based on KMC's speculative assertion that excess vendor capacity may become available.

13. Finally, we affirm the Commission's determination that any arrangements for early deployment in smaller MSAs should be left to private agreements.<sup>54</sup> Such agreements could specify that a carrier will not request that certain switches be deployed according to the

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<sup>49</sup> KMC suggests that by November 1, 1997, one month after the September 30, 1997, deadline for initial requests for the first three phases of number portability implementation, LECs will know the extent of the demands on their resources in deploying number portability. KMC Petition at 3.

<sup>50</sup> *Id.*

<sup>51</sup> U S WEST Opposition at 6. As an example, U S WEST notes that in Phases I, II, and III of the deployment schedule, it will be responsible for updating switches in Minneapolis, Phoenix, Seattle, Denver, and Portland, Oregon. New entrant polling indicates that in Minneapolis, only 1 of 48 host switches and 20 of 25 remote switches will not be selected by competitors for number portability deployment. In Seattle and Denver, the poll suggests that all switches will be selected. In Phoenix, polling is not complete. In Portland, the poll finds that only 4 of 26 host switches and 1 of 4 remote switches will not be selected. See U S WEST Opposition at Appendix.

<sup>52</sup> See *First Report and Order*, 11 FCC Rcd at 8485.

<sup>53</sup> See Bell Atlantic/NYNEX Opposition at 5 (stating that in the early stages of number portability implementation it is impossible to determine what vendor capacity will be because "industry does not yet know the volume of end offices for which number portability will be requested").

<sup>54</sup> *First Order on Reconsideration*, 12 FCC Rcd at 7298.

Commission's schedule if the LEC from which deployment is requested agrees to deploy other number portability-capable switches outside the 100 largest MSAs at an earlier date than the deadlines in the Commission's schedule.<sup>55</sup> As USTA points out, KMC does not allege that it has encountered any problem with this flexible approach.<sup>56</sup> Should carriers agree to "swap" the implementation deadlines for specific MSAs or switches within MSAs, they can jointly file specific waivers to do so.<sup>57</sup> Given the numerous factors that influenced the development of the phased implementation schedule, we conclude, as did the Commission in the *First Order on Reconsideration*, that permitting private agreements among LECs is preferable to a wholesale modification of the implementation system for wireline carriers.

## V. CONCLUSION

14. For the reasons stated above, we deny KMC's petition for reconsideration and affirm the revised implementation schedule for wireline carriers adopted by the Commission as set forth in the *First Order on Reconsideration*.

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<sup>55</sup> *Id.* at 7274.

<sup>56</sup> USTA Opposition at 5. *See also* USTA Opposition at 6; Bell Atlantic/NYNEX Opposition at 5; U S WEST Opposition at 12.

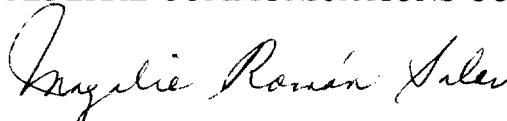
<sup>57</sup> *First Order on Reconsideration*, 12 FCC Rcd at 7298.

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**VI. ORDERING CLAUSES**

15. Accordingly, IT IS HEREBY ORDERED that, pursuant to Sections 1, 4(i) and (j), 201-205, 218, and 251 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i) and (j), 201-205, 218, and 251, KMC's Petition for Reconsideration IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in cursive script, reading "Magalie Roman Salas".

Magalie Roman Salas  
Secretary

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**APPENDIX**

**Petition for Reconsideration (filed 5/8/97):**

KMC Telecom, Inc. [KMC]

**Oppositions to Petition for Reconsideration (filed 5/11/97):**

Ameritech

Bell Atlantic and NYNEX [Bell Atlantic/NYNEX]

United States Telephone Association [USTA]

U S WEST, Inc. [U S WEST]

**Reply (filed 5/23/97):**

KMC